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IN THE
COURT OF APPEALS OF INDIANA

EDWARD CROWE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0604-CR-342
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0602-CM-21708

February 28, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Appellant-Defendant Edward Crowe ("Crowe") was convicted in the Marion Superior Court of two Class A public indecency misdemeanors. On appeal, Crowe contends there is insufficient evidence to sustain his convictions. We affirm.

Facts and Procedural History

On January 27, 2006, Colleen Pine ("Pine") was walking home from a friend's house on a public sidewalk in Grassy Creek Apartments, in Marion County, Indiana. Crowe lived in the same apartment complex. As Pine passed by Crowe's apartment, which opened directly to the outside, she observed Crowe standing naked in his doorway.

On January 28, 2006, Carly Long ("Long"), who also lived in Grassy Creek Apartments, observed Crowe at the mailbox, blowing kisses at her. Long went home to her apartment and told her mother what had happened. Long's mother instructed her to return to the area and get Crowe's address so that she could call the police. As Long was standing on the sidewalk between two apartment buildings, looking at Crowe's apartment to get the address, Crowe opened his door and exposed his genitals to Long. Crowe also "rubb[ed] his private parts." Tr. at 13.

On February 8, 2006, the State charged Crowe with two counts of public indecency, as class A misdemeanors. Appellant's App. pp. 15-16. On March 20, 2006, following a bench trial, Crowe was found guilty as charged and was sentenced to one year for each conviction. Id. at 10. The sentences were ordered to run concurrently, were both suspended, and Crowe was ordered to serve one year probation. Id. at 10-11. The following appeal ensued.

Standard of Review

When reviewing claims of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Townsend v. State, 750 N.E.2d 416, 417 (Ind. Ct. App. 2001). We consider only the evidence favorable to the verdict and any reasonable inferences to be drawn therefrom. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Discussion and Decision

Crowe contends that there was insufficient evidence to support his convictions for public indecency. Specifically, Crowe argues that because the prohibited conduct occurred while he was standing just inside the exterior doorway of his apartment, they did not occur in a "public place" and therefore an essential element of the crime was not established.

Indiana Code section 35-45-4-1(a) (2004) provides, in pertinent part, that:

(a) A person who knowingly or intentionally, in a public place:

* * *

> (3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person; or
> (4) fondles the person's genitals or the genitals of another person;

commits public indecency, a Class A misdemeanor.

The legislature did not define the term "public place" in this statute. As such, the term "public place" is ambiguous. Because there is an ambiguity, we turn to the rules of statutory construction to aid in our determination of the legislative intent behind Indiana Code section 35-45-4-1.

Where a statute may have more than one reasonable interpretation, it is our foremost objective to determine and give effect to the intent of the legislature. Sales v. State, 723 N.E.2d 416, 420 (Ind. 2000).

> A fundamental principle of construction is to construe the statute in accordance with the purpose of the statute and the statutory scheme of which it is a part. We presume that the legislature intends for us to apply language in a logical manner consistent with the statute's underlying policy and goals. The legislative intent as ascertained from the whole prevails over the strict, literal meaning of any word or term used therein. Lastly, the law is clear that, "[t]he rule of strict construction of criminal statutes cannot provide a substitute for common sense, precedent, and legislative history. The construction of a penal statute should not be unduly technical, arbitrary, severe, artificial or narrow. In this regard, while penal statutes are to be strictly construed, . . . the courts are not authorized to interpret them so as to emasculate the statutes."

Tormoehlen v. State, 868 N.E.2d 326, 330 (Ind. Ct. App. 2006) (internal citations omitted) (quoting 73 Am.Jur.2D Statutes § 196 (2001) (footnotes omitted)).

While the statute does not define "public place," our supreme court has interpreted this term to mean "any place where the public is invited and are free to go upon special or implied invitation[,] a place available to all or a certain segment of the public." State v. Baysinger, 272 Ind. 236, 241, 397 N.E.2d 580, 584 (1979). This definition was further refined by this court in Lasko v. State, 409 N.E.2d 1124 (Ind. Ct. App. 1980) and Thompson v. State, 482 N.E.2d 1372 (Ind. Ct. App. 1985). In Lasko, the defendant was convicted for public indecency when she took off her clothes and, while nude, massaged and fondled a vice officer's genitals at the massage parlor where she worked. On appeal, we reversed Lasko's conviction finding that "[a] private locked room in which two consenting persons engage in promiscuous conduct is not a 'public place' within the meaning of the public indecency statute." Lasko, 409 N.E.2d at 1126. However, we also

stated that "legislative intent in prohibiting such conduct from occurring in a 'public place' appears to be to compel persons who wish to engage in such conduct to do so privately." Id. at 1128. Moreover, we made clear that our holding was not to be construed as inconsistent with Baysinger, and stated that "reasonably foreseeable, potential witnessing" is also a significant factor to consider. Id. at 1129.

In Thompson, the defendant, while in an adult bookstore, exposed his genitals to an officer in an adjoining booth and was subsequently convicted for public indecency. On appeal, we rejected Thompson's claim that he was not in a public place, stating:

> [T]he booths within the [adult bookstore] fall within the definition of 'public place' employed in Baysinger and by this court in Lasko . . . Thompson exceeded the physical bounds of his 'private place' (i.e. his booth from which he could exclude the public) by placing his uncovered genitals through a hole into an area susceptible to view by members of the public who were free to enter the adjoining booth without restriction. . . . In so doing, Thompson forfeited the protection afforded to persons who choose to engage in indecent conduct within private places.

Id. at 1377.

While we recognize the general rule that a private home is typically not a "public place" for purposes of the public indecency statute, see Long v. State, 666 N.E.2d 1258, 1261 (Ind. Ct. App. 1996), the facts herein show that Crowe exceeded the physical bounds of the privacy of his apartment by opening the exterior door and standing naked in full view of Pine and Long, who were rightfully and foreseeably on a nearby public sidewalk. In so doing, Crowe forfeited the protection afforded to persons who choose to engage in indecent conduct within private places.

The Lasko and Thompson courts recognized that the State's purpose in criminalizing public indecency is to protect the viewing public '"who might find such a

spectacle repugnant,'" Thompson 482 N.E.2d at 1367 (quoting Lasko, 409 N.E.2d at 1128), and "to compel persons who wish to engage in such conduct to do so privately." Id. In furtherance of these goals, we hold that Crowe's commission of the prohibited acts in the open doorway of his apartment, a place where members of the public could readily and foreseeably observe his conduct, were committed in a "public place." Therefore, sufficient evidence supports Crowe's convictions for public indecency.

Affirmed.

KIRSCH, C. J., and SHARPNACK, J., concur.